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December 5, 1996

MR GEORGE SYLVESTER  
VAN WATERS AND ROGERS  
P O BOX 34325  
SEATTLE WASHINGTON 98124

RE: HW-Multnomah County  
Van Waters and Rogers  
ORD009227398  
NWR-96-103

**NOTICE OF NONCOMPLIANCE**

DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY  
NORTHWEST REGION  
FILE COPY

Dear Mr. Sylvester:

I am writing in reference to your response to the Notice of Noncompliance NWR-HW-096-091 dated October 30, 1996. I have reviewed the documentation that has been sent to respond to the violations cited and I have had discussions with personnel at EPA regarding the most significant violation related to the cleanup activities at the facility. Based on the information submitted and my discussions with Mr. Al Odmark and Mr. Kevin Shanilek with EPA, it appears that Van Waters and Rogers did not perform an adequate waste determination on the soil excavated from the site. According to EPA personnel approval was not given regarding the waste testing, waste treatment on site or the disposal of the soil off-site. As a result the following additional violations have occurred:

**For waste treated in roll-off containers:**

**VIOLATION 1:** 40 CFR 268.7 Failure to submit a waste analysis plan for the waste treated on site.

Additionally generators sending a treated restricted waste must notify the disposal facility that the treated waste has met the specific treatment standards. The profile sheet and the manifests do not indicate the notifications were made.

**For the waste that was collected in the waste pile on-site and not treated:**

**VIOLATION 2:** ORS 466-100 requires that generators dispose of hazardous waste at a facility with a hazardous waste permit that allows acceptance of the waste. Van Waters and Rogers disposed of this waste at Chemical Waste in Arlington which is a permitted facility, however, the waste was shipped as nonhazardous waste. This waste was not tested to determine if it was hazardous waste. Based on historical information and samples collected on some of the soil this waste may have been contaminated with F-listed solvents. F-listed waste requires incineration or must be managed according to the methods stated in the above violation.

USEPA RCRA



3019445

John A. Kitzhaber  
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**For all of the waste:**

**VIOLATION 3:** OAR 340-102-065 and 40 CFR 262.56 Van Waters and Rogers failed report this waste on the facility's annual reports and pay the generator fees associated with the waste

**VIOLATION 4:** 40 CFR 262.34 (a) which requires generators have a permit if waste is stored in excess of 90 days.

The initial analytical work on the waste stream was done on 3/10/93. The composite sampling of the waste in the containers after treatment was done on 6/10/93. The waste disposal was done on 3/28/94. This is approximately one year after the initial sampling, which is in excess of the 90 days storage requirement. It is unclear if the soil was excavated on 3/10/93, however the soil was being stored from 6/10/93 to 3/28/94.

The following is an explanation of violations 1, 2, and 3 cited above. There are numerous issues related to this site that were discussed in the response you provided. The first issue concerns a waste determination being done by using process knowledge. Process knowledge can be used in the case where the facility has a process, or if the soils excavated are from a clean site. However, in the case of VWR, the site has historical contamination problems of F-listed and U-listed compounds in the parts per millions, knowledge of process stating that a specific area of the site is clean is not realistic. Furthermore, VWR did test some of the soils from that area and contamination was found. One of the samples showed that the level of contamination present was above the LDR standard. The soils and groundwater at the site are currently being treated for solvent contamination.

It appears that the facility used observations to determine which soils were tested and which soils were not. The majority of the soil was placed in a soil pile on site, there was only one composite sample taken of this waste. This one composite sample would not be considered a representative sample of the 136 tons of soil shipped off site as nonhazardous waste. The detection levels for these waste streams are in parts per million and parts per billion which are impossible to observe, therefore, all of this soil waste would need to be tested. The sampling strategy should have differentiated between surface and subsurface soils if necessary, the number of samples needed to perform the characterization ( and the locations of the samples. In this case only one composite sample was taken which is not considered an adequate waste determination.

Contrary to your first point concerning process knowledge, some of the soil in the trench area was tested. The results showed that the soils were contaminated above the LDR treatment standards. VWR proceeded to treat approximately 45 yards (31.32 tons) of the soil from the trench area in three roll-off containers. As you state in your response generators can treat in containers however, the containers must remain closed. If the facility is treating the waste to meet a treatment standard the generator must send the Regional Administrator (the Department of Environmental Quality, (DEQ) in this case) a waste analysis plan 30 days prior to treating the waste. The Department did not receive a waste analysis plan from the facility. The purpose of the



December 5, 1996

Page 3

plan is to ensure that the treatment method and the subsequent testing is appropriate for the waste stream.

Based on the manifest copies taken during the inspection, there were 167.33 tons of soil taken to Chemical Waste Management in Arlington as a non-hazardous waste. Some of this waste was untested waste, and some of the waste was treated hazardous waste. If hazardous waste is mixed with a solid waste then the resulting mixture would be considered to be a hazardous waste. It is required that the generator notify the disposal facility that the waste being shipped is a hazardous waste that has been treated to meet the treatment standards. The disposal facility did not receive this notification because the original waste codes were not referenced on the manifests or the original profile sheet.

These violations include Class I violations and are considered to be serious violations of Oregon law. These additional violations, along with the violations cited in the first Notice of Noncompliance, will be referred to the Department's Enforcement Section with a recommendation to proceed with a more formal enforcement action. Formal enforcement actions may include a civil penalty assessment. Civil penalties can be assessed for each day of violation.

To address these violations the following must be done by the dates listed below:

1. Should the facility decide to treat any waste in the future to meet the LDR standards, a waste analysis plan must be submitted 30 days prior to the start of the treatment.
2. Submit an updated annual report to address the shipment of any hazardous waste that was shipped as nonhazardous waste or treated hazardous waste to the Department within thirty days of this Notice.

Should you have any questions or comments concerning this Notice please feel free to contact me. I understand that Mr. Al Odmark with EPA is going to be gone for the next three months. I will be forwarding this information to Mr. Kevin Shanilek, since he was the person overseeing this project during the time that this waste was disposed of.

Sincerely,



Rebecca Paul  
Environmental Specialist  
Northwest Region

Cc: Mr. Rich Duval : Eastern Region: Chemical Waste Management , Inspector  
Enforcement Section  
Mr. Jim Vilendre: WMC  
✓ Mr. Kevin Shanilek: EPA  
Mr. Mark Rogers: VWR: Portland Facility.